

Message Text

LIMITED OFFICIAL USE

PAGE 01 EC BRU 04770 111805Z

ACTION EB-07

INFO OCT-01 EUR-12 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01

CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05

L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05

SS-15 STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02

OMB-01 /101 W

-----120710Z 022152 /13

R 111602Z MAY 77

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 3766

INFO ALL EC CAPITALS

USDEL MTN GENEVA

USMISSION GENEVA

USMISSION OECD PARIS

LIMITED OFFICIAL USE EC BRUSSELS 4770

PASS AGRICULTURE ELECTRONICALLY

E.O.11652: N/A

TAGS: EAGR, EEC

SUBJECT: EUROPEAN COURT OF JUSTICE (ECJ) CASE ON NFDM COMPULSORY
PURCHASE SCHEME

REF: (A) GENEVA 3561 (B) 76 THE HAGUE 1734

1. SUMMARY: THE LEGALITY OF THE EC'S NFDM COMPULSORY PURCHASE
SCHEME IS CURRENTLY BEING ADJUDICATED BY THE ECJ. HEARINGS
WERE CONCLUDED MAY 3; PRESENTATION OF THE OPINION OF THE
ADVOCATE GENERAL (A MEMBER OF THE COURT) IS SCHEDULED FOR JUNE 7.
ECJ DECISION IS EXPECTED ABOUT MID-JULY. END SUMMARY.

2. WE HAVE BEEN IN PERIODIC CONTACT WITH MEMBERS OF A LAW
FIRM REPRESENTING THE DUTCH CONCERN "GRANARIA" WHO HAVE KEPT
US INFORMED ABOUT THE ECJ CASE CONCERNING THE COMPULSORY
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 EC BRU 04770 111805Z

PURCHASE SCHEME. GRANARIA CHALLENGED THE LEGALITY OF THE
COMPULSORY PURCHASE SCHEME ALMOST IMMEDIATELY AFTER ITS
ESTABLISHMENT IN MARCH 1976 (REF B). OUR SOURCE TELLS US
THAT THE ECJ CASE ARISES OUT OF SUITS AGAINST THE COMPULSORY
PURCHASE SCHEME BROUGHT BEFORE THE DUTCH AND GERMAN NATIONAL
COURTS. THESE COURTS HAVE DEFERRED TO THE ECJ FOR RESOLUTION
OF THE MAJOR LEGAL QUESTIONS RAISED BY THE COMPLAINANTS.

THE DUTCH CASE IS CONCERNED, AT THIS STAGE, ONLY WITH A FINDING OF LEGALITY. THE GERMAN CASE INVOLVES DAMAGE CLAIMS AS WELL.

3. ORAL HEARINGS BEFORE THE EUROPEAN COURT OF JUSTICE CONCERNING THE EC'S NFDM COMPULSORY PURCHASE SCHEME WERE CONCLUDED MAY 3. THE WRITTEN OPINION OF THE ADVOCATE GENERAL IS TO BE PRESENTED TO THE COURT ON JUNE 7. THE ADVOCATE GENERAL IS A MEMBER OF THE COURT SELECTED TO PREPARE A PRELIMINARY LEGAL FINDING. THIS PROCEDURE IS FOLLOWED IN ALL ECJ CASES. THE ACTUAL DECISION OF THE COURT, WHICH MAY OR MAY NOT FOLLOW THE ADVOCATE GENERAL'S RECOMMENDATIONS, WILL BE TAKEN LATER. OUR SOURCES EXPECT THIS DECISION TO BE TAKEN ABOUT MID-JULY. HOWEVER, THE DECISION MIGHT BE POSTPONED UNTIL AFTER THE SUMMER HOLIDAYS.

4. OUR SOURCE TOLD US THAT THE CASE AGAINST THE COMMISSION WAS BASED ON THE FOLLOWING MAJOR POINTS:

A. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO FORCE THE INDUSTRY TO BUY CERTAIN PRODUCTS BECAUSE SUCH REGULATIONS ARE NOT PROVIDED FOR NOR COMPATIBLE WITH ARTICLE 39 OF THE ROME TREATY (ARTICLE 39 LAYS DOWN THE OBJECTIVES OF THE COMMON AGRICULTURAL POLICY);

B. THE DEPOSIT SYSTEM PROVIDED FOR UNDER THE COMPULSORY PURCHASE SCHEME IS OUTSIDE THE SCOPE OF THE ROME TREATY WHICH PROVIDES FOR EC COLLECTION OF REVENUES ONLY FROM TARIFFS, LEVIES AND THE VAT;
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 EC BRU 04770 111805Z

C. BETWEEN THE PERIOD MARCH 19 AND APRIL 1, 1976, THE IMPLEMENTING REGULATIONS NECESSARY FOR THE OPERATION OF THE COMPULSORY PURCHASE SCHEME WERE NOT IN EFFECT. CONSEQUENTLY, IT WAS IMPOSSIBLE TO COMPLY WITH THE REGULATION;

D. THE SCHEME INVOLVED DISCRIMINATION AMONG PRODUCTS AND IN THE POSITION OF EC PRODUCERS VIS-A-VIS IMPORTERS. FOR THIS REASON IT WAS NOT COMPATIBLE WITH THE RULES ON COMPETITION LAID DOWN BY THE TREATY OF ROME.

5. WE NOTED THAT POINT D ABOVE PARALLELED OUR OWN COMPLAINT TO A LARGE EXTENT. OUR SOURCES AGREED AND SAID THAT THE GATT CASE IN GENEVA HAD BEEN MENTIONED AT THE MAY 3 HEARING IN THIS RESPECT. IN RESPONSE, THE COMMISSION HAD TRIED TO SUBMIT THE PAPERS PRESENTED TO THE GATT PANEL TO THE ECJ. HOWEVER, THESE DOCUMENTS HAD NOT BEEN ACCEPTED BY THE COURT SINCE THEY REPRESENT ONLY ONE SIDE OF THE CASE. IN MARCH, OUR SOURCES HAD EXPRESSED THE HOPE THAT THEY WOULD BE ABLE TO USE THE

GATT PANEL FINDINGS IN THE ECJ CASE. HOWEVER, THEY SAID
THAT AT THIS POINT NO FURTHER EVIDENCE COULD BE PRESENTED
TO THE ECJ (UNLESS IT REOPENED THE HEARINGS).

6. OUR SOURCES SAID THAT THE CASE WAS HIGHLY POLITICAL AND
THAT IT WAS DIFFICULT TO SAY WHAT THE OUTCOME MIGHT BE.
WHILE THEY FELT THAT THE DAMAGE CLAIMS ADVANCED IN THE GERMAN
COURTS WOULD PROBABLY BE DENIED, THEY THOUGHT THAT THE COURT
MIGHT CAST DOUBT ON THE LEGAL BASIS OF THE EC REGULATION AND,
IN EFFECT, TELL THEM THAT "THEY CAN'T DO IT AGAIN." HINTON

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, POLICIES, GOVERNMENT PROCUREMENT, NONFAT DRIED MILK
Control Number: n/a
Copy: SINGLE
Sent Date: 11-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977ECBRU04770
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770167-0296
Format: TEL
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770571/aaaacjy.tel
Line Count: 126
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 4fc7ba96-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 GENEVA 3561, 76 THE HAGUE 1734
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 15-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2573566
Secure: OPEN
Status: NATIVE
Subject: EUROPEAN COURT OF JUSTICE (ECJ) CASE ON NFDM COMPULSORY PURCHASE SCHEME
TAGS: EAGR, EEC
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/4fc7ba96-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009